Remarks

The present Response is to the Office Action mailed 04/28/2009, made final. Claims 1-9, 11-16 and 18-26 are presented for examination.

Claim Rejections - 35 USC § 101

Claims 1-9 remain rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As an initial matter, the United States Constitution under Art. I, Section, cl. 8 gave Congress the power to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a grant of a patent to "[w]whoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof'. Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". Further, despite the express language of § 101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by § 101. These exceptions include "laws of nature", "natural phenomena" and "abstract ideas". See *Diamond v. Diehr,* 450, USPQ 175, 185,209 USPQ (BNA) 1, 7 (1981). However, the courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co.* v. *Signature Financial Group, Inc.* 149 F.3d 1368, 1973,47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

Claims 1-9 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or

thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's claims recite a software module which is not within the statutory classes of invention and the recited functions are viewed as functions that fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. Thus, claims 1-40 as claimed are non-statutory since they may he preformed within the human mind.

Applicant's independent claim 1 as amended does not appear to perform any functions or transforming a particular subject matter to a different state. Claim 1 appears to recite "software modules" that do not perform any functions.

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Applicant's response:

Applicant points out that the Examiner states that claims 1-9 are rejected, making no direct reference to claims 20-26 in the above 101 rejection. Applicant assumes because the Office Summary Action page of the Office Action states that claims 20-26 are rejected, applicant applies the above rejection to said claims.

Applicant herein amends claim 1 to recite; "A computerized appliance for controlling display, manipulation, and transaction parameters of aggregated data compiled from a plurality of data sources including a suite of software modules installed on and executing from a digital memory of the computer appliance, the suite comprising the following software modules:"

Applicant believes because claim 1 now recites a computerized appliance executing software from memory, applicant believes the claim is now undoubtedly tied to another statutory class (such as a particular apparatus, as a computerized appliance); therefore, the claim is clearly statutory.

Regarding claim 20, applicant herein amends the claim to recite; "and the individual user navigates, conducts transactions, data processing and generates reports containing the data via access to all of the software modules via the single user interface." Applicant believes this recited limitation constitutes transforming underlying subject matter (such as an article (data) or materials) to a different state or thing.

The applicant acknowledges the examiner's statement in paragraph 3 of a previous Office Action that claims 1-9, 11-16 and 18-19 are allowable over the art of record. Claims 1-9 and 20-26 are also patentable, as amended.

Summary

As all of the claims, as amended, argued, and indicated by the Examine, have been shown to be patentable over the art presented by the Examiner, applicant respectfully requests reconsideration and the case be passed quickly to issue.

If any fees are due beyond fees paid with this amendment, authorization is made to deduct those fees from deposit account 50-0534. If any time extension is needed beyond any extension requested with this amendment, such extension is hereby requested.

Respectfully Submitted,
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